

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD J. ANDREW,
Petitioner

V.

KENNETH NELSON,
Respondent

CIVIL ACTION
NO. 04-11895-REK

Memorandum and Order

August 2, 2005

I. Pending Matter

Pending for decision are matters related to the following filing:

Petitioner's Motion for Enlargement of Time to File Response to Respondent's Motion to Dismiss (Docket No. 11, filed July 25, 2005).

II. Procedural Background

The petitioner, Richard J. Andrew, signed his petition for habeas corpus pursuant to 28 U.S.C. § 2254 on July 15, 2004. (Docket No. 1, filed August 31, 2004) The petition was filed on August 31, 2004. On the same day, Andrew's motion for appointment of counsel was filed. (Docket No. 3).

On November 8, 2004, I issued an Order pursuant to Rule 4 of the Rules Governing Section 2254 Cases requiring a response from the respondent, Kenneth Nelson. Nelson filed a motion for extension of time on November 24, 2004 (Docket No. 6), which I granted on November 30, 2004. On December 28, 2004, Nelson filed a motion to dismiss.

(Docket No. 7) On January 5, 2005, Andrew responded with a motion to strike the motion to dismiss. (Docket No. 9)

In a Memorandum and Order issued on July 6, 2005, I denied Andrew's motions to strike and for the appointment of counsel. I also allowed Andrew until July 26, 2005, to file a response to the respondent's motion to dismiss in light of the fact that Andrew mistakenly believed that the respondent's motion was not a proper response to his habeas petition.

On July 25, 2005, Andrew filed the present motion seeking an extension of time until September 26, 2005, to file his response.

III. Analysis

I recognize the difficult position that being incarcerated places Andrew in for the purposes of researching and filing his motion, particularly since he apparently did not receive the July 6, 2005, Memorandum and Order until July 21, 2005. Therefore, I am inclined to allow him an extension of time. I find, however, that his request for what amounts to more than two months to respond is unreasonable given that the respondent's motion has been pending since December 28, 2004, and the interests of the judicial system in the timely resolution of disputes. Therefore, I will allow Andrew until August 23, 2005, to file his response.

ORDER

For the foregoing reasons, it is ORDERED:

Petitioner's Motion for Enlargement of Time to File Response to Respondent's Motion to Dismiss (Docket No. 11) is ALLOWED IN PART AND DENIED IN PART as explained in the above Memorandum.

/s/Robert E. Keeton
Robert E. Keeton
Senior United States District Judge